

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of

**CenturyTel Wireless, Inc.
Petition for Partial Waiver of
Cellular Cross-Interest Rule**

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WT Docket No. 02-325

**OPPOSITION AND FURTHER COMMENTS OF
CENTURYTEL WIRELESS AND CENTURYTEL, INC.**

CenturyTel Wireless, Inc., (“ALLTEL-C”Tel”) a wholly-owned subsidiary of ALLTEL Communications, Inc. (“ALLTEL”), together with CenturyTel, Inc. (collectively, the “Parties”) offer this opposition and further comments in connection with the above-captioned proceeding.¹ The Commission received four sets of comments. AT&T Wireless Services Inc. (“AT&T”) and the joint submission of Dobson Communications Corporation, Western Wireless Corporation and Rural Cellular Corporation (the “Rural Cellular Providers”) both support grant of the waiver sought by the Parties.² Likewise two individuals filed brief comments: one in support of the waiver and one against. No serious arguments were raised in opposition, and the overwhelming weight of the record demonstrates that that waiver under these circumstances is appropriate. The Commission should act quickly to grant the Parties’ Petition.

I. NOTHING IN THE RECORD SUPPORTS DENIAL OF THE PETITION

Among the comments, a total of 129 words were filed in opposition to the Parties’ Petition; all by Mr. Daniel Welter of Robbinsdale Minnesota. Mr. Welter states, “I don’t believe

¹ See *Public Notice*, Comment Sought on CenturyTel Wireless Inc. and CenturyTel Inc. Petition for Waiver of Cellular Cross Interest Rule, WT Dkt No. 02-235 (rel. Oct. 17 2002).

² See Comments of AT&T Wireless Services, Inc. (filed November 18 2002) (“*AT&T Comments*”); Comments of Rural Cellular Providers (filed November 18 2002) (“*Rural Cellular Provider Comments*”).

Alltel should be allowed to control both cellular bands,” and proposes that, “[t]he license should be sold to another company that already owns a license in a bordering MSA or RSA.” He suggests that “there are not a lot of choices” where “the land is divided into to many pieces owned by to many companies,” and requests that, “[i]f there are no bordering companies interested in the license, it should be returned to the FCC and included in a future auction.”³ He offers no evidentiary nor legal support for these assertions and proposals. Putting aside whether Mr. Welter even has standing to raise these objections,⁴ on the merits his arguments are not only unsupported, but unsupportable.

No party, not even Mr. Welter, disputes the standard of decision that should be applied. As the Commission stated in its *Spectrum Cap Order*, the cellular cross-interest rule is “subject to waiver” where the proposed cross-interest “would not create a significant likelihood of substantial competitive harm.”⁵ Though he does not dispute that standard of decision, Mr. Welter fails to adduce any evidence that the cross-interest proposed here would produce any competitive harm.

Indeed, it appears that Mr. Welter’s opposition arises not out of concern for competition, but rather out of desire that the FCC mandate consolidation of MSAs and RSAs into geographically cohesive service areas. Thus he urges that the FCC should force a sale of this interest “to another company that already owns a license in a bordering MSA or RSA.” Leaving

³ Mr. Welter’s pleading is styled only as a “Brief Comment,” but because the “Comment” in fact urges the Commission to deny the Parties’ Petition the Parties will therefore treat Mr. Welter’s pleading as a Petition to Deny. Because Mr. Welter’s brief comments consume less than one half of a single typewritten page, this document will provide no page citations to those comments.

⁴ See Beta Communications, L.L.C. and Leap Wireless International, Inc., *Memorandum Opinion and Order*, 15 FCC Rcd 24156 ¶ 7 (WTB 2000) (dismissal for lack of standing where petitioner failed to show injury from challenged action). See also, e.g. Friends of the Earth, Inc. and Forest Conservation Council, Inc. Various Objections and Petitions to Deny, *Memorandum Opinion and Order*, 17 FCC Rcd 201 ¶ 7 (CWD 2002).

aside whether the FCC should force a roll-up of licenses that it allocated separately, this argument fails by its own terms. Factually there is no evidence that the Gulf Coast region, or the overlap area in particular, lacks geographically cohesive service offerings. Yet more fundamentally, the point is irrelevant in the context of this particular transfer: The Petition made plain that the interest to be transferred will not convey operational control over the business or the license. A transferee could not simply add the licensed area to its own service territory, and accordingly any transfer of this interest would have essentially no impact on the geographic scope of a particular brand's service offerings.

Mr. Welter does not produce a shred of evidence that the proposed acquisition will diminish competition, or produce any other result that would harm the public interest. And the evidence to the contrary is manifold. AT&T and the Rural Cellular Providers agree that the proposed overlap area is fully competitive, and that the proposed overlap would not diminish that competition in any way. Likewise, the only other "Brief Comment" was (in contrast to Mr. Welter's) filed by an individual who actually lives in the affected region. He states that the "overlapping area is very small, very rural and mostly swamp," and that "granting the petition may actually improve the overall competitiveness of the Gulf Coast Region."⁶

II. THE COMMISSION SHOULD NOT DELAY GRANT OF THIS PETITION

The Rural Cellular Providers suggest that the Commission should eliminate the cross-interest rule altogether, which would "moot the need for a waiver."⁷ While this statement

⁵ 2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services, Report and Order, 16 FCC Rcd 22668, 22707 ¶ 86 (2001) ("*Spectrum Cap Order*"). See also *AT&T Comments* at 2; *Rural Cellular Provider Comments* at 4.

⁶ Comments of Donald R. Newcomb, filed Oct. 22, 2002.

⁷ *Rural Cellular Provider Comments* at 6.

is indisputable—repealing the rule would indeed moot the need for the waiver—the Parties would nevertheless urge the Commission to act as quickly as possible to grant their Petition.

The Commission has authorized staff on delegated authority to waive the cross-interest rule as set forth in the *Spectrum Cap Order*, and there is no reason to defer this waiver request pending review of the rule itself. Time is of the essence, as the Parties face a contractual deadline. The Parties therefore urge the Commission to consider the waiver on its own merits, and not to delay consideration pending a more comprehensive review of the cross-interest rule.

III. CONCLUSION

The record in this proceeding provides no evidence that “the proposed cross-interest would create a significant likelihood of substantial competitive harm.” The Commission should waive the cross-interest rule and allow the Parties to consummate the instant transaction.

Respectfully Submitted,

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December 2, 2002